IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

(1) COMPANY APPLICATION (L) NO.205 OF 2004
(2) COMPANY APPLICATION (L) NO.1253 OF 2005
(3) COMPANY APPLICATION (L) NO.714 OF 2006

Office Notes, Office Memorandum of Coram, appearance, Court's orders or direction and Prothonotary's orders	Court's or Judge's orders

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Mr.Madhav Rai i/by Nighandi Shah & Himaytullah for the applicants in C.A.(L) 1253/2005.

Mr.Rabindra Huzani for the applicants in C.A.(L)714/2006 & 205/2004.

Mr.Jagtiani i/by RMG Law ASS for the respondents.

Coram : R.S.Mohite,J

Date : 21.9.2006.

PC

1. All these 3 applications are made by the applicant-Bank of Baroda which holds a 2nd charge after the petitioner in the main petition, on some of the assets of the respondent-company i.e. Silverline Technologies Ltd., Petition was filed by the Punjab National Bank and admittedly, petition has not been admitted. It appears that during the pendency of this petition for admission, the petitioner and the

respondent-company entered into consent terms. The first consent term pertained to payment of monies due by installments but they were supplemented by further consent terms by which the company agreed to sell land & building at Thane in order to repay the petitioner. Admittedly, that sale has not taken place till today for want of an adequate purchaser. The Bank of Baroda claims that monies are due to them from the respondent-company. For recovery of this amount they have filed a proceeding in the D.R.T. They have also applied for interim relief in the said proceeding.

2. In Company Application (L) No.205/2004 the prayer is for setting aside the order of this Court dated 29.11.2003 by which order, the consent terms were made a rule of this Court. In my view, this prayer cannot be granted because the said consent terms were between the petitioner and the respondent-company. The same

would not in any way bind the applicant bank even if they were made a rule of the Court. In Company Application (L) No.714/2006 the prayer relates to setting aside the transaction between the respondent-company and the petitioner relating to 16 flats and 32 car parking spaces in respect of which present applicant claims to hold 2nd charge. These assets of the company however, were not the part of the consent terms because these transactions took place prior to the filing of the consent terms and in the consent terms, adjustments were made while mentioning the amounts due. It is sought to be contended that these transactions should be set aside because they were fraudulent. The consideration which was shown to be paid by the petitioner to the respondent-company was 1/3rd the actual market value. It is further sought to be contended that the Company Court has no power to entertain a winding up

petition once a proceeding is pending before the D.R.T. As far as this later proposition is concerned, it has to be rejected in view of the division bench ruling of this Court in the case of **Viral Filaments Ltd., V/s. Indusind Bank Ltd.,** reported in 2001(4) Bom.C.R.175, in which it is clearly held that action for winding up is maintainable notwithstanding the fact that an application for recovery has been filed before the D.R.T.

3. As regards the first contention, in my view, without going into the question as to whether transactions were bonafide, the Company court is not the forum for setting aside these transactions on the ground of fraud. If applicants want to allege that the transactions were vitiated by fraud, the appropriate forum will lie elsewhere. Hence, C.A.205/2004 and C.A.714/2006 will be liable to be rejected.

4. Company Application No.1253/2005 was only for grant of inspection and since I hold that other 2 Civil applications are not maintainable, Company Application No.1253/2005 is also rejected.

5. All the 3 Company applications are dismissed accordingly. It is however,made clear that dismissal of these Company applications will not preclude the applicants from raising all contentions before the D.R.T. or before any other forum.

(R.S.Mohite,J)